



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on August 12, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-18777

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

In the matter of: **Ghana Airways Limited**

We grant, *sua sponte*, Ghana Airways Limited (Ghana Airways) an exemption from 49 U.S.C. § 41301 to the extent necessary to permit Ghana Airways to engage in scheduled foreign air transportation of persons (and accompanying baggage) between Accra, Ghana, on the one hand, and New York, New York, and Baltimore, Maryland, on the other hand, via the intermediate point Banjul, the Gambia, in both directions, using aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier.¹ We are taking this action for the sole purpose of accommodating Ghana Airways passengers who have been stranded following Ghana Airways' recent suspension of services to the United States. Accordingly, the authority granted here is limited to (1) the carriage of stranded passengers, already booked and ticketed, who are completing the return leg of a round trip itinerary; and (2) to the extent that stranded passengers are accommodated, one-way passengers or passengers holding a roundtrip ticket whose return flight is on a carrier other than Ghana Airways.²

Carrier representative: Malcolm L. Bengé (202) 298-8660

DOT Analyst: Gordon H. Bingham (202) 366-2404

DISPOSITION

Action: Approved

Action date: August 12, 2004

We took the action described above solely to permit the repatriation of passengers to Ghana or the United States. Our action here in no way should be viewed as an indication of how the Department will act on any future requests by Ghana Airways to conduct services between Ghana and the United States.

Effective dates of authority granted: August 16, 2004-August 30, 2004

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: X Standard conditions (attached).

Special conditions/Partial grant/Denial basis/Remarks: The authority granted to Ghana Airways, in addition to the conditions described above, is subject to the condition that the transportation of the stranded passengers is done at no additional charge to the passenger beyond that already included in the passenger's ticket or in the original agreement between the passenger and Ghana Airways. In order to assure that no additional Ghana Airways passengers become stranded, the Department's action does not allow for passengers to embark on initial outbound travel from the United States or Ghana (except as otherwise authorized above). In addition, in granting the authority described above, we expect Ghana Airways to continue to make all possible efforts to address the needs of its other affected passengers.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

¹ We note that should a duly authorized and properly supervised foreign air carrier propose to conduct these flights, it must first obtain authority from the Department in the form of a statement of authorization under 14 CFR Part 212 of the Department's rules.

² To the extent that passengers are ticketed to Baltimore or New York, Ghana Airways must take all appropriate steps to assure that the passenger is returned to the gateway point to which the passenger is ticketed.

Under authority assigned by the Department in its regulations, 14 CFR Part 385; we found that (1) without prejudice to any conclusion we might reach with regard to Ghana Airways at a later date, given the special circumstances present in this situation, Ghana Airways was qualified to conduct the special and limited operations by wet lease described above; (2) grant of the authority was consistent with the public interest; and (3) our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

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Attachment

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

05/2004